IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2643 of 2005
To
FIRST APPEAL No. 2665 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MAYURBA JIVUBHA AMARSANG. - Defendant(s)

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Appearance :
MR SATYAM CHHAYA, AGP for Appellant(s) : 1,
MR CB UPADHYAYA for Defendant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 02/05/2007

ORAL JUDGMENT

1. The short facts of the case are that, for acquisition of land at village Sonpari for the purpose of Kharo Irrigation Project, the proposal was moved under the Land Acquisition Act (hereafter 'the Act'). Thereafter, notification under Section 4 of the Act was published on 29.03.1979 and notification under Section 6 was published on 18.03.1980 and the Award was passed on 29.01.1981 by the Special Land Acquisition Officer(hereafter 'the Special LAO') and he awarded compensation at Rs.115 per Are (Rs.1.15ps. per sq.mtr.) for irrigated land, Rs.75/- per Are (Rs.0.75Ps. per sq.mtr.) for non-irrigated land and Rs. 1 per Are for the waste land. It may be stated that the waste land is not the subject matter of the First Appeal.

2. The claimants/land owners were not satisfied with the compensation awarded by the Special LAO of Rs. 45,000/- per Hectare (Rs.4.50ps. Per sq. mtr.). The matter was referred to the Reference Court for adjudication. The Reference Court after adjudication did not accept the evidence based on yield method and considered the valuation report and ultimately, found that the claimants are entitled to the additional compensation of Rs. 2.55Ps. for the irrigated land and Rs. 1 per sq. mtr. for the non-irrigated land and thereafter, accordingly passed the Judgment and Award. It is under

these circumstances, the present Appeals before this Court by the State.

3. Heard Mr. Chhaya, learned AGP for the appellant and Mr. Upadhyay, for the claimant/respondent herein.

4. The first aspect which deserves consideration is raising of two disputes for one land which is under acquisition and the same is Land Reference Case No. 188 of 1985 Hussain Ismail with Land Reference Case No. 427/85, preferred by the legal heirs of Hussain Ismail being Jebunben Hussain.

5. Mr. Upadhyay, learned counsel appearing for the concerned respondent-claimant confirms the position that both the aforesaid references were for the same land and he fairly conceded that this Court may maintain the Award in respect of one of the reference from the aforesaid two references for the very land.

6. It is hardly required to be stated that for the compensation of the same land, there cannot be two disputes for compensation and consequently two reference cases. However, it appears that Land Reference Case No.185/85 was preferred by Hussain Ismail whereas Reference Case No. 427/85 is preferred by Jebunben Hussain being the legal heirs of Hussain Ismail probably because after the death of Hussain Ismail apprehending that the first Reference may stand abated. In any

event, when the legal heir of Husseinbhai Ismail viz. Jebunben Hussain has preferred another Reference Case No. 427/85 and in Reference Case No. 188/85, the legal heirs did not come on record, it would be just and proper to observe and declare that the Land Reference Case No. 427/85 preferred by legal heirs of Hussain Ismail through Jebunben Hussain shall remain as continued for compensation and the Award passed in Land Reference Case No. 188/85 preferred by Hussain Ismail would be non-executable since Hussain Ismail had expired and as it was for the very land for which the Award is already passed by the Reference Court in Land Reference Case No.427/85. Hence, the concerned Appeal of the State against the award passed in Reference No.188/85 shall stand allowed to the fullest extent by setting aside the Judgment and Award of the Reference Court.

7. The aforesaid takes me to examine the appeal on the aspects of compensation awarded by the Reference Court of the land in question.

8. The learned counsel for both the sides are in agreement on the aspect that for the very village Sonpari, the acquisition were made in respect of which the Notification under Section 4 of the Act was published on 11.12.1980 and the dispute was raised by the land owner therein for the additional amount of compensation and they

were ultimately referred to the Reference Court for adjudication being Reference Case No. 213/85 to 217/85. In those cases, the Reference Court had passed the Judgment and Award on 09.05.2003, whereby, the Reference Court awarded the additional compensation at Rs.2.55ps. for irrigated land and Rs. 1/- for non-irrigated land. The said Judgment of the Reference Court was challenged before this Court in the proceedings of First Appeal Nos. 25 to 29 of 2005 and as per the order dated 28.03.2005, passed by the Division Bench of this Court, the First Appeals of the State have been rejected and consequently, the additional amount is awarded by the Reference Court in the said Judgment is confirmed by this Court.

9. The learned AGP, during the course of the hearing, has declared before the Court that the Judgment of this Court dated 28.03.2005 is accepted by the Special Land Acquisition Officer and no appeal is preferred before any higher forum.

10. Therefore, in view of the aforesaid position, it appears that if the amount of additional compensation awarded by the Reference Court in the above referred Judgment is considered after taking into consideration the amount already awarded by the Special LAO, the valuation of the land as confirmed by the Division Bench of this

Court in the above referred First Appeals for village Sonpari would come to Rs.3.85 Ps. For the irrigated land and Rs.1.65ps. for the non-irrigated land in respect of the acquisition for which the notification under Section 4 of the Act was published on 11.12.1980.

11. If the facts of the present case are examined, it appears that the notification under Section 4 of the Act was published on 29.03.1979 and therefore, the acquisition in the present case is earlier by 21 months, i.e. 1 year and 9 months in comparison to the acquisition in respect of which, as discussed above, the First Appeals were dismissed and the award of the Reference Court were confirmed.

12. It appears that for arriving at the correct valuation on the date of the notification under Section 4 of the Act, in the present case, i.e. 29.03.1979, if the reduction in the valuation is counted @ 10% for one year, and in the present case it is 1¾ year (1 year and 9 months) and hence, the reduction in the valuation of the land will be required to be made accordingly. The Reference may be made to the decision of this Court in First Appeal Nos. 1986/97 to 1999/97 decided on 04.04.2007, wherein the view taken by this Court is that for the purpose of assessing the compensation, if the basis is made of the valuation confirmed by this Court, the

reverse deduction may also be permissible if the Notification under Section 4 of the Act is of the earlier period. Accordingly, if the reduction is considered for 1 year and 9 months, it would be the reduction @ 17.5% than the valuation confirmed by the Division Bench of this Court for the land of the very village in respect of which the notification under Section 4 of the Act was published on 11.12.1980. Accordingly, taking the basis of Rs. 3.85 ps. for the irrigated land and Rs.1.65Ps. for non-irrigated land, if the reduction is made @ 17.5%, Rs.0.65 Ps. deserves to be deducted from Rs.3.85 Ps. Therefore, net figure would come to Rs.3.18 Ps. Similarly, for non-irrigated land, from the amount of Rs.1.65 Ps. if reduction is counted @ 17.5%, it would come to Rs.0.28Ps. Both can be said as the valuation of the land on 29.03.1979 when the notification under Section 4 of the Act was published.

13. Since the Special LAO has awarded the compensation @ Rs.1.15Ps. Per sq. mtr. for irrigated land and Rs.O.75Ps. for non-irrigated land, the additional amount of compensation based on the valuation of the land would come to Rs.2.03Ps. for irrigated land and Rs.0.62Ps. For non-irrigated land. As against the same, the Reference Court has awarded Rs.2.55Ps. as additional compensation for irrigated land and Rs. 1/- as additional compensation for non-

irrigated land. Therefore, the Award passed by the Reference Court deserves to be modified to that extent for awarding of the additional amount of compensation.

14. Hence, it is hereby observed and directed that the claimants-respondents shall be entitled to the additional compensation shall be entitled to the additional compensation for irrigated land @ Rs.2.03 Ps. per sq. mtr. and Rs.0.62Ps. per sq. mtr. for non-irrigated land.

15. Other part of the benefit as ordered by the Reference Court on the aspects of solatium and interest cannot be said as by committing error and therefore, the said part of the Judgement and Award for solatium and awarding of the interest is confirmed to the extent that on account of the reduction in the principal amount of compensation, there will be consequently proportionate reduction in the solatium and interest as awarded by the Reference Court.

16. In the result, Appeals are partly allowed. No order as to costs. Decree accordingly.

(JAYANT PATEL, J.)

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